

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2619 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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OTARAM JAYSINH PARMAR

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR AY KOGJE for Petitioner  
MR JJ YAJNIK for Respondent No. 1  
MR SP HASURKAR for Respondent No. 2  
NOTICE SERVED BY DS for Respondent No. 3

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/12/1999

ORAL JUDGEMENT

This is a petition for a direction to the respondents to consider him for promotion to the post of head constable grade-I from the date on which other persons who passed the examination alongwith the petitioner, have been given promotion with all consequential benefits. The petitioner had joined the

services as SRP constable on 10.12.69 as constable grade-III. In April, 1978, the petitioner passed the examination for head constable grade-II. It appears that the petitioner was not given appointment letter for promotion to the post of constable grade-II, but he was deputed to Police Training School at Vadodara and worked there as head constable grade-II from 1.5.80 on deputation. In the month of April, 1982, the petitioner was permitted to appear in the examination for the head constable grade-I, but that examination was not conducted due to court's order. On 19th January, 1988, the applications were invited from head constable grade-II to appear in the examination for head constable grade-I. The petitioner was eligible and hence applied. The examination was scheduled to be held and in the meanwhile the petitioner was transferred from Police Training School, Baroda to somewhere else and hence he filed Civil Suit No. 213 of 1988 in the Court of Civil Judge (S.D.), Baroda against the transfer. No doubt, the transfer was not stayed, but the petitioner was directed to appear in the examination, and the department was directed to permit the petitioner to appear in the examination for the post of head constable grade-I. On 4.6.90, 17 candidates out of 64 were declared successful. The petitioner was also declared successful amongst 17 candidates. 17 candidates also appeared for the practical examination by an order dated 5.6.90. The petitioner also appeared in the practical examination. As the department had already filed Civil Misc. Appeal no.174 of 1988 in the District Court, Baroda against the interim order passed by the Civil Judge (S.D.), Baroda. The result of the petitioner alongwith other persons was reserved and it was made clear to be declared subject to the result of the appeal. Other 15 candidates were promoted to the post of head constable grade-I by an order dated 15.6.90. Civil Appeal No. 174 of 1988 preferred by the State Government was dismissed on 30.8.89 which was filed against the interim order dated 5.3.88 of the trial court. As such, the petitioner was eligible for promotion on 15.6.90. The petitioner made a representation before the authority concerned and the Commandant, SRP Group-I granted permission for personal hearing on 15.1.91. Another departmental examination was conducted for promotion to the post of head constable grade-I for 27 candidates junior to the petitioner, who appeared and were selected and promoted to the post of head constable grade-I by an order dated 5.2.91. The petitioner filed a representation dated 19.7.91. Another representation dated 30th November, 1991 was also made by the petitioner for promotion. By a letter dated 25.2.93, the petitioner was informed that no junior has been

promoted to the higher post of head constable grade-I. The petitioner was also asked for an explanation as to on what basis he was claiming the promotion. This court considered that there being a promotional post and required to be filled up, the petitioner was denied the same under the pretext that his seniors have till date not passed requisite examination and the petitioner was required to wait till then. The approach of the department was considered to be absurd and unwarranted by this Court and the persons who have passed later on the examination became senior and who have not passed the examination with the petitioner and more particularly for the purpose of promotion. When promotional avenues had been there, those who have passed the examination are required to be considered for the same and it was also considered that the respondents have placed reliance on rule 59 of Bombay State Reserve Police Force Rules, 1959, but it does not say anything about the protection of seniority of those who have not passed the examination and does not provide that those who have not cleared the examination, yet they may be senior for the appointment of promotional posts than the petitioner. This Court by way of an interim relief dated 12th August, 1994 directed the respondents not to promote any person to the post of head constable grade-I who is junior to the petitioner in passing grade-I examination, before promoting the petitioner to the said post .

2. The respondent department has filed an affidavit-in-reply in which it is stated that no second grade constable junior to the petitioner has been promoted to the post of head constable grade-I. He will not become senior in the cadre by virtue of passing the examination earlier after passing the examination. The original seniority of the candidate is taken care by promoting him to the post of head constable grade-I. The petitioner was informed on 15.1.91 personally that the petitioner was not entitled to promotion to the post of first grade head constable as the petitioner has been appointed as second grade head constable on 27.6.90 and he would only be eligible for promotion to the post of head constable on completion of two years from the date i.e. 26.2.92. Under the Rules, a head constable grade-II is eligible for promotion to the post of head constable grade-I only after completion of two years in the cadre of head constable grade-II. As per Rules, candidate's service record, character and ability to command a unit of which he is going to be the incharge, are also taken into consideration for promotion. Merely a candidate passes the examination earlier in point of time, he cannot claim promotion if he is junior to the

persons who are also on consideration in length of service and have not been able to appear in the examination because of certain contingencies. The petitioner will be eligible for promotion to the post of head constable grade-I only on completion of two years, on the post of head constable grade-I i.e. on 26.6.92. During that period, there was a directive from the Government to give priority to fill up backlog of vacancies. Even at the relevant time, the respondents could not be able to clear up backlog of vacancies. When the backlog of vacancy was clear, the petitioner's case for promotion to the post of head constable would be considered strictly in accordance with the seniority. The petition was liable to be dismissed on the ground of delay, undue long lapse of time etc.

4. Heard the learned advocates for the parties. The learned advocate for the petitioner contended that the petitioner had passed the examination for head constable grade-II in April, 1978 and he was deputed to the Police Training School at Baroda and worked there for about 9 years as head constable grade-II. 17 candidates out of 64 were declared successful in the departmental examination held for the post of head constable grade-I. On 5.6.90, the petitioner's promotion was withheld subject to the result of the appeal filed in the District Court, Baroda and that appeal was dismissed on 30.8.90. As such, the petitioner was entitled for the promotion to the post of head constable grade-I on 5.6.90. As other 15 persons who had also appeared in the examination were given promotion on that date. Later on, another departmental examination was conducted for promotion and 27 candidates junior to the petitioner appeared and selected and promoted to the post of head constable grade-I by an order dated 5.2.91, but the department has not shown any competence of the petitioner for the promotion as others have already been appointed on 5.6.90. Hence, the petitioner is entitled for the promotion from 5.6.90. It is submitted that even if it is assumed that the petitioner is required to have experience of head constable grade-II and that experience the petitioner had, on the date of the examination and he was completely eligible for the promotion to the post of head constable grade-I on 15.6.90 when other companion candidates were promoted. It is admitted in the affidavit-in-reply by the respondents that the petitioner was eligible for the promotion to the post of head constable grade-II on 26.6.92. Still however, the petitioner was not promoted and he was promoted on the post on 30th August, 1996 after about 4 years from the date of eligibility of the

petitioner declared by the respondent. The learned advocate for the petitioner also relied on the judgment of the Supreme Court in the case of Virendra Kumar and others vs. Union of India reported in A.I.R. 1981(3) SCC, 30 on the point that the petitioner is entitled for promotion to the post of head constable grade-I from the date on which he had become eligible.

5. On the other hand, the learned Assistant Government Pleader contended that the petitioner was eligible for promotion on 26.6.92, but the department filled up backlog and hence the petitioner could not be appointed.

6. I have thoroughly considered the submissions made on behalf of the parties. As the petitioner had passed the departmental examination on 4.6.90, and had experience of more than two years and as he was working as constable grade-II from 1.5.82 till that date. Thus, the petitioner was fully eligible for the promotion on 5.6.90. The learned counsel for the petitioner pointed out that he requested this court to direct the department to promote him from 26.6.92, when he was considered by the respondent as eligible for promotion to the post of head constable grade-I.

7. In view of the above discussion, this petition deserves to be allowed in part and is accordingly allowed in part. The department is directed to consider the case of the petitioner for promotion to the post of head constable grade-I on and from 26.6.92 and promote him if he is found fit for the same, with all consequential benefits. The department shall consider the case of the petitioner for promotion within a period of two months from the date of production of a certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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